

CHECKLIST FOR 8(a)(1) Allegations¹

I. Statements in a Conversation

- A. Date**
- B. Time (and Duration if the conversation was prolonged)**
- C. Place (at work station, in office, in smoking area)**
- D. Who was present (including those who did not participate but may have overheard the conversation)**
- E. Who spoke? (Get details to establish speaker is supervisor or agent)**
- F. What was said?**
 - 1. Who initiated the conversation?
 - 2. What was the response, if any, to potential violative statements?
 - 3. No conclusions such as “he threatened me.” What were the actual words used, as best the witness recalls?
- G. Aware of other similar statements being made to anyone else?**
- H. Did witness tell anyone about the statement? If so, when and who?**

II. Statements in a Speech

- A. Get information described in I. A - D above**
- B. Did speaker read from prepared text? Did speaker ad-lib or deviate?**
- C. Were questions allowed? If so, find out who asked the questions and what responses were provided**
- D. Was anyone given a copy of the speech? If so, who?**
- E. Was speech recorded? (If so, by whom?)**
- F. Get statements from a substantial or representative number of people who heard speech and, if prepared text used, obtain copy for use during interviews (Number to be interviewed depends on size of audience)**
- G. Interview those who were given copies to “read along” with speaker, find out if they signed or initialed the copies they read, etc.**

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This checklist is intended as an aid to identify some key areas to cover in an affidavit and is *not* a comprehensive list of questions or issues. Other areas to include in the affidavit will be determined by legal research and by responses to the items in the checklist.

III. Written Statements

- A. Get copy of statement**
- B. Obtain details of distribution**
 - 1. How (mail; attached to paycheck, etc.)
 - 2. When (if document is dated, about that same date?)
 - 3. By whom (supervisors?)
 - 4. To whom (all employees in a certain department; all employees)

IV. Polling of Employees

- A. Who conducted the poll?**
- B. Who was present when the poll was conducted?**
- C. When was the poll conducted?**
- D. Where was the poll conducted?**
- E. How (exactly) was poll conducted? Was it by secret ballot?**
- F. Was employee told the purpose of the poll was to determine the truth of a union's claim of majority? If not, what was the employee told?**
- G. What was employee told about retaliation or reprisal against the employee?**
- H. Did the employee sign anything before participating in the poll? If yes, does the employee have a copy or recall what the statement said?**

V. Surveillance of Union or Protected Activity

- A. Who engaged in the surveillance? Who else witnessed the conduct?**
- B. When did it occur (date and time of day)**
- C. What did person do? (e.g. watched from a parked vehicle, drove back and forth, videotaped, wrote down license plate tags, etc.)**
- D. Where was the union or protected activity? (e.g. union hall, restaurant, etc.)**
- E. Was the location of the union or protected activity near the Employer's facility, on a main road?**
- F. Is the employee aware of any possible reason for the supervisor to be in the area of the union or protected activity? (e.g. on the supervisor's way home?)**

VI. Discipline or Discharge Because of Protected Concerted Activity

A. Is the activity protected?

1. What was the activity?
2. Is the subject matter of the activity something to do with wages, hours, or working conditions, i.e. is the activity protected?
3. Did the employee do anything that would arguably cause the employee to lose the protection of the Act? (Threats, slowdowns)
 - a) If even arguable, get all the specifics of the conduct and identify all potential witnesses

B. Is the activity concerted?

1. Did the employee talk to other employees about the subject, i.e. is the activity concerted? If yes,
 - a) When did those conversations take place?
 - b) Where did those conversations take place?
 - c) Who was present for those conversations?
 - d) What was said?
2. Did the employee engage in any conduct with other employees regarding the concern about wages, hours or working conditions (e.g. a protest, strike, walkout)? Did the employee speak on behalf of other employees?
3. Did the statements or conduct occur during an employee meeting? If yes, did other employees support or disavow the employee's comments or conduct and/or make similar comments or engage in similar conduct?
4. Is there a collective-bargaining agreement covering the employee?
 - a) If yes, was the conduct in furtherance of any contractual right? If so, get a copy of the contract and have the employee specify which provision of the contract is involved

C. Did the Employer know about the protected, concerted activity?

1. When and how did the Employer learn? Any corroboration?
2. Which supervisor or agent learned of the protected activity?
3. What did the supervisor or agent say?

D. Did the Employer admittedly discipline the employee because of the protected concerted activity?

1. If yes, identify all witnesses and obtain copies of all documents establishing that the protected concerted activity was the reason for the discipline
2. If no, what reason was given for the discipline or discharge?
 - a) Is there animus toward the protected activity?
 - b) Is there evidence of disparate treatment?

VII. Discharge of Supervisor

A. Can violate 8(a)(1) if for

1. Failure to carry out unfair labor practice activity for Employer
2. Testifying adversely to employer's interests in Board proceedings

B. Obtain circumstances as in 8(a)(3) situation

VIII. Remedies

A. Does the Employer communicate with employees via e-mail or electronically

B. Evidence of chill in potential 10(j) cases